

SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AIRCRAFT AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, CIO, ETC.,

Petitioner,

vs.

GEORGE HUFFMAN, Individually, and on Behalf  
of a Class, Etc., et al.,  
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

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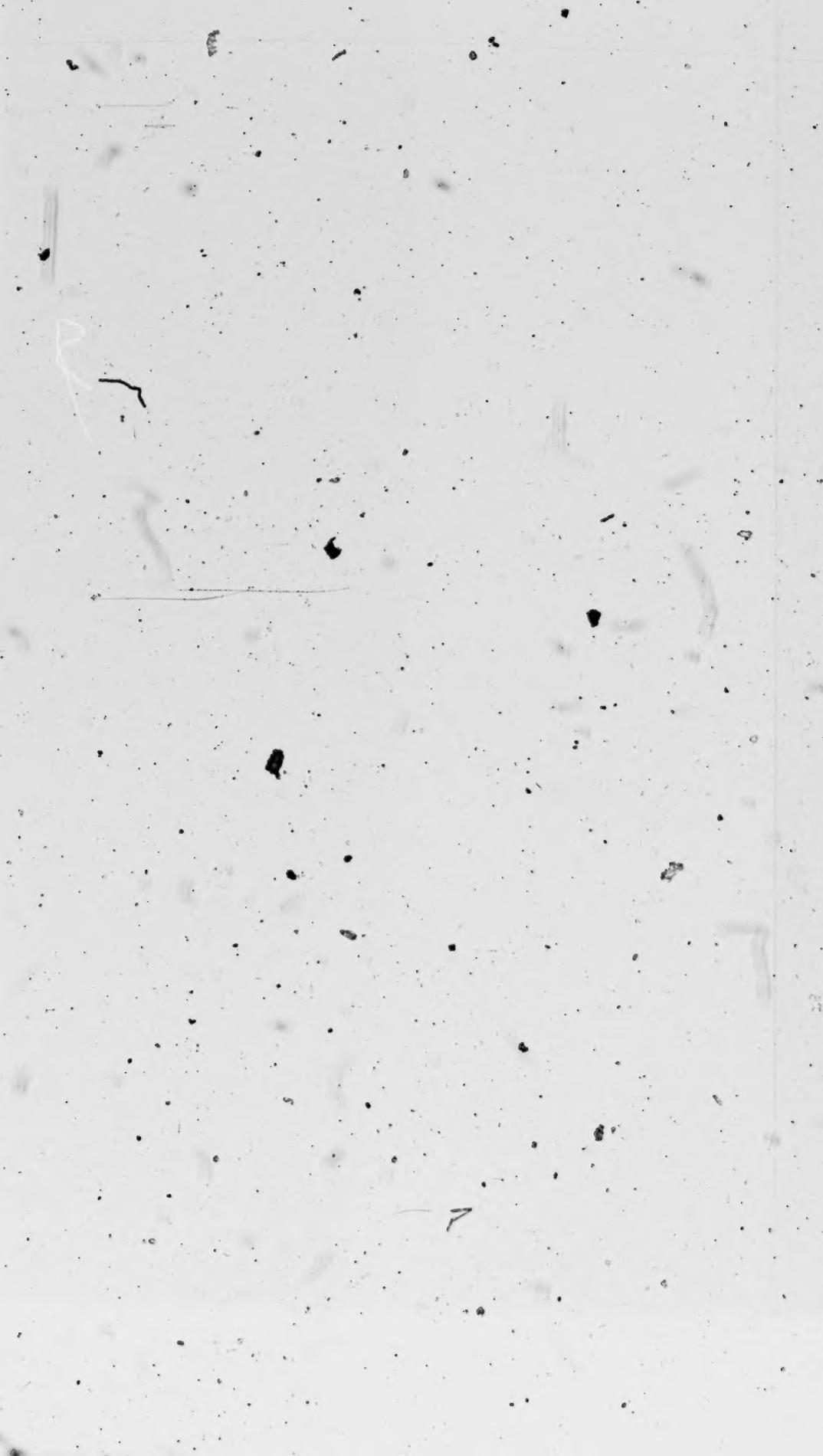
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**Miscellaneous:**

<i>American Capitalism, The Concept of Counter-</i>	
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<i>Business Cycles and Unemployment</i> , National Bu-	
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<i>Collective Bargaining</i> , by Leonard J. Smith, Prent-	
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<i>Proceedings of the National Conference of Social Work</i> , 1919, p. 392.....	17

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<i>The Seniority Principle in Union-Management Relations</i> , by Frederick H. Harbison (Industrial Relations Section, Department of Economics and Social Institutions, Princeton University, Princeton, N. J. 1939).....	46
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<i>Statement of Employment Principles</i> , issued by the Retraining and Reemployment Administration of the Department of Labor, October 7, 1946....	18
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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
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—♦—  
**BRIEF FOR THE PETITIONER**

—♦—  
**OPINIONS BELOW**

The order of the District Court overruling plaintiff's motion for summary judgment and sustaining the defendants' motion for summary judgment (R. 26) is unreported. The majority opinion of the Court of Appeals reversing the District Court and the dissenting opinion of Judge McAllister (R. 30-38) are reported in 195 F. 2d 170.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on March 3, 1952 (R. 29) and its opinion was filed on the same date (R. 30). The defendants filed timely petitions for rehearing, which were denied on April 15, 1952 (R. 69). On October 13, 1952, this Court entered an order granting the petitions for writ of certiorari in this case (No. 194) and its companion case (No. 193). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

## **QUESTIONS PRESENTED**

1. Whether a seniority system in a collective bargaining agreement between an employer and a labor union, as collective bargaining agent pursuant to the Labor Management Relations Act, 1947, is discriminatory and invalid because it grants seniority credit equal to the length of their military service to World War II veterans with no prior service with the employer as well as to veterans who had worked for the employer before entering military service.
2. Whether a federal District Court and a United States Court of Appeals have jurisdiction to determine whether a statutory collective bargaining representative, by the negotiation of certain seniority provisions, has breached its duty of non-discriminatory representation under the Labor Management Relations Act, 1947, in an action brought without prior resort to the administrative procedures of the National Labor Relations Board by one of the employees in the group represented by the collective bargaining representative.

## STATUTES INVOLVED

The pertinent statutory provisions appear in Appendix A, *infra*.

## STATEMENT

Following the end of World War II, the UAW-CIO (petitioner herein), as statutory collective bargaining representative of the defendant Ford Motor Company's employees (including plaintiff-respondent Huffman), and the defendant employer entered into successive collective bargaining agreements, the seniority clauses of which provided that World War II veterans be accorded seniority credit for the time spent in military service in the armed forces. (The relevant contract provisions appear in the Record at pages 13-22). These provisions were negotiated as part of a comprehensive veterans' readjustment and integration program receiving public and private endorsement on a nationwide basis. Three collective bargaining agreements are involved. The first, executed on July 30, 1946 by the petitioner and the Ford Motor Company, contained the following provision (R. 14, 15; R. 12):

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941 . . . ."

"(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee (sic) of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 22, 1941, in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

The same provisions were included in a subsequent agreement, negotiated by the same parties and dated August 21, 1947 (R. 17-18; R. 12). A third agreement, dated September 26, 1949, deleted the above clauses—but preserved to all veterans then employed by Ford, the seniority credits established in the 1946 and 1947 agreements (R. 21, R. 12-13).

The plaintiff-respondent Huffman entered the employ of the company on September 23, 1943 at the employer's "Louisville Works". He was inducted into military service on November 18, 1944 and was discharged from such service on July 1, 1946. Upon timely application he was reemployed by the Ford Motor Company and has continued in its service since that time (R. 67). *Upon reemployment he was immediately credited with the seniority he would have had if he had never left Ford's employment* (R. 7). In other words, he was given seniority credit for the time spent in military service, and such time was treated as if during it he had worked for Ford. This was done pursuant to the mandate of the Selective Training and Service Act (50 U. S. C. 308) and the contract clause discussed above. He is a member of the International Union, United Automobile, Aircraft and Agricultural Implements Workers of America, CIO, the petitioner herein (R. 3):

The respondent Huffman brought this action individually and on behalf of approximately 275 other persons employed.

by Ford at the "Louisville Works" on February 21, 1951, against Ford and petitioner. He sought a declaratory judgment of the invalidity of the provisions of the collective bargaining agreements between Ford and the petitioner relating to the seniority rights of World War II veterans. He alleged that he and the other employees on whose behalf the suit was brought were unreasonably prejudiced in their seniority standings by the operation of the contract clauses granting seniority credit for time spent in the Armed Forces to veterans with *no* prior service with the company. The operation of this clause, it was alleged, caused them to be in positions on the seniority roster lower than those to which their hiring dates would otherwise have entitled them (R. 5-7). Plaintiff and the class whom he represents are alleged to have been laid off or furloughed at times and for periods when, except for such provision, they would not have been laid off or furloughed (R. 7). The class, as defined in the complaint, is not limited to veterans employed by Ford prior to their military service. Rather, it is defined to include *all* employees whose seniority standing, as determined by their hiring date, is adversely affected by veterans not previously employed whose seniority standing is determined by their date of entry into military service (R. 7). The Court below, however, held that only Huffman and similarly situated *veterans* were discriminated against (R. 38).

Huffman further alleged that the contract clauses in question impaired his seniority status as preserved for him by the Selective Training and Service Act (50 U. S. C. 308) and that they were invalid because they were beyond the authority of the statutory collective bargaining agent to negotiate and to contract (R. 7, 8).

Motions for summary judgment were filed by all parties and on May 23, 1951 the District Court sustained the defendants' motion, holding in part:

• • • the Court • • • is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

Upon plaintiff's appeal, the Court of Appeals reversed the judgment of the District Court. Under authority of *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U. S. 275, 66 S. Ct. 1105, the majority opinion upheld the District Court, in part, holding that no rights secured by the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. 301, to veterans previously employed by Ford had been violated by the clauses in question (R. 33). However, the majority held the clauses invalid as to Huffman and those veterans similarly situated (R. 38) because "veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class" and veterans not employed at the time they entered military service "were given seniority credits for their period of armed service after June 21, 1941" (R. 32) the same as veterans who had prior to military service been employed by Ford. The Court of Appeals held that length of military service "has no relevance to terms and condition of work or the normal and usual subjects of contracts between union and employer" (R. 37). For this reason the Court held that the seniority system as applied to Huffman was discriminatory within the meaning of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (R. 37, 38) and violated Section 7 of the National Labor Relations Act (61 Stat. 140, 29 U. S. C. 157) which requires that the parties to labor contracts "must make their agreements with a view to the rights of

the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).

The Court of Appeals has in effect held that veterans of World War II, not previously employed, cannot, as a matter of law, be given seniority credit for time spent in military service (although such credit is accorded to Huffman and other previously employed veterans) because such a seniority system is not in the interest of the entire membership of the union, but is, rather, unlawful discrimination on behalf of one group of employees against another.

Judge McAllister dissented from the majority opinion on the following grounds:

"I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

The Court below dismissed defendants' petition for rehearing on April 15, 1952 (R. 69), and this Court granted petitions for writ of certiorari on October 13, 1952.

## SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the seniority system granting seniority credit to all World War II veterans, whether or not previously employed by Ford, equal to the period of their military service, was invalid and discriminatory as to Huffman and those similarly situated despite the absence of any malice or hostility.
2. In failing to hold that the seniority system granting seniority credit to all World War II veterans, whether or not previously employed by Ford, equal to the period of their military service was:
  - (a) negotiated by the petitioner in the interest of the entire union membership;
  - (b) a lawful, non-discriminatory, and reasonable solution of an important social, economic and industrial problem;
  - (c) based on relevant differences which the statutory collective bargaining representative (petitioner herein) was authorized to consider in its negotiations;
  - (d) a normal and usual subject of collective bargaining with respect to which the union had authority to negotiate.
3. In failing to hold that the District Court and the United States Court of Appeals lacked jurisdiction to determine whether a statutory collective bargaining representative has, by the negotiation of certain seniority provisions, breached its duty of non-discriminatory representation under the Labor Management Relations Act, 1947, in

an action brought by one of the affected employees without prior resort to the administrative procedures of the National Labor Relations Board.

4. In reversing the order and judgment of the District Court.

### SUMMARY OF ARGUMENT

I. The seniority provisions under attack in the instant case were designed to prevent World War II veterans with no prior employment by Ford from being at a disadvantage, seniority-wise, in relation to employees who first hired in at Ford during World War II and after the entry into military service of such veterans. These clauses thereby prevented wide-spread dissatisfaction among veterans who would otherwise have felt that their absence due to military service was causing them to be at a serious disadvantage in industrial employment upon their return to civilian life. The failure of labor unions to make similar arrangements for returning veterans after World War I caused such veterans to be deeply resentful of non-veteran civilians and labor unions and was a major cause in the extensive and often violent conflicts which took place between veterans and organized labor after World War I. Insofar as the negotiation of the clauses here under attack prevented the repetition of this unfortunate experience, the negotiation of these seniority provisions was clearly in the interest of the union as a whole. This Court, in the case of *Aeronautical District Lodge, 727 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, ruled that if seniority provisions are in the interest of all the members of the represented group of employees and are not a method of hostile discrimination against any particular group, such seniority provisions are properly negotiated. We submit that the rule of that case should be controlling in the instant case.

II. The standards employed by this Court in the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, in reviewing the action of labor unions were analogous to those the Court uses in reviewing the action of legislative bodies.<sup>1</sup> Thus, a statutory collective bargaining representative, in classifying employees within the represented group, must act reasonably and in accordance with principles of due process and equal protection as established in the 14th Amendment. The Court in the *Steele* case held that racial discrimination was based on irrelevant factors and was therefore unreasonable and improper. In the instant case, however, the seniority system under attack was a means of securing equality of opportunity for employment to veterans absent due to military service and therefore prevented rather than caused discrimination. The seniority system made certain that no veteran would be at a disadvantage in industrial life because of his military service.

III. The public policy declared by Congress in the Labor Management Relations Act, 1947, favors free collective bargaining. The effectuation of such a policy requires that the collective bargaining representative have the widest possible discretion in negotiating the terms of employment, subject only to the minimum degree of judicial review and intervention necessary to the protection of employee rights secured by the constitution or by statute and to resolve possible conflicts with other public policies equal in importance to the policy promulgated and protected by the Act. Unless the union's action is unreasonable, arbitrary, in bad faith or in violation of statute or public policy, a reviewing court should not substitute its judgment for that of the negotiating parties as to what is a wise labor contract. Any other result would undermine the scheme of free collective bargaining envisioned by Congress and would, in fact, make such bargaining impossible.

Furthermore, it was within the legitimate authority of the collective bargaining representative to take account of those social and economic considerations which gave rise to the seniority provisions here under attack. Such factors as an employee's experience, family status and need for employment have often been considered by labor unions as relevant factors in collective bargaining. World War II veterans represented the nation's ablest young men and it was proper to seek to attract them into industrial employment and union membership. Their need for employment in many instances was greater than that of civilians who had gone to work during the war. The Court of Appeals erred in holding that such factors were irrelevant and beyond the scope of authority of the collective bargaining representative to consider in negotiations.

IV. Seniority systems often are not directly or exclusively based on actual work experience with a particular employer. A great variety of seniority systems is available to negotiating parties in collective bargaining. All of these, insofar as they are reasonable, even though they may adversely affect a small or large number of employees, must be sustained on judicial review. The seniority of respondent Huffman is also based, in part, on time spent in military service rather than actual employment at Ford. He thus benefits from the very type of seniority credit of which he complains. Furthermore, the Court of Appeals misconstrued the operation of the seniority clause when it held that only veterans in Huffman's class were adversely affected. Actually, non-veterans who hired in after the date of entry into military service of a veteran not previously employed at Ford would also feel the adverse impact of the agreement. The Court of Appeals held that the clauses in question are discriminatory (and therefore invalid) because they give preference in seniority to employees with

less actual working experience. However, the clause can also work in favor of a veteran, who, like Huffman, had prior employment with the company. (See p. 42, *infra*). Such a veteran may have had *less actual work experience* than a veteran not employed prior to his military service and nevertheless, may outrank the latter in seniority, notwithstanding that the latter has the benefit of the clause under attack. In fact, this may be true as between two veterans neither of whom were employed by Ford before entering military service. Thus, the clause differentiates as between members of the very class that the respondent employees claim it favors. This means that the clause does not discriminate in favor of veterans as against non-veterans, or in favor of one class of veterans as against another. What the clause does, reasonably and uniformly, is to give all veterans credit for time they spent in the armed forces.

Adopting the respondent's position would make it impossible to negotiate the large variety of seniority arrangements now in existence which make employment retention rights contingent on such factors as skill, education, family status, experience in the industry, etc. Unless a seniority system is unreasonable or shows evidence of hostile discrimination courts should not substitute their judgment for that of the negotiating parties.

V. The Court of Appeals in its opinion held that by agreeing to the clauses in question the union violated rights guaranteed to the employees in Section 7 of the National Labor Relations Act, as amended (29 U. S. C. 157). By so holding, the Court of Appeals has in effect usurped the exclusive jurisdiction of the National Labor Relations Board to remedy and prevent unfair labor practices within the meaning of the National Labor Relations Act as amended. That Act provides that it is an unfair labor

practice for a labor organization to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

Even if the decision of the Court of Appeals is not regarded as equivalent to a holding that the union's agreement was a specific unfair labor practice (we respectfully suggest that the opinion below is not altogether clear in this connection), the Court erred, nevertheless, in holding that it (and the District Court) had jurisdiction to decide this case. This follows from the fact that, whether or not the alleged discrimination committed by the union is an unfair labor practice, the National Labor Relations Board has established an administrative remedy for the correction of wrongs to employees flowing from a union's failure to represent them for purposes of collective bargaining without discrimination. The existence of such administrative remedies makes inapplicable the case of *Steele v. L. & N. Rd. Co., supra*, and cases following it, for this Court specifically found in those cases that plaintiffs had no administrative remedy available to them. The decision of the Court of Appeals thus violates the doctrine which precludes judicial relief prior to the exhaustion of available administrative remedies. It was error for the Court of Appeals to fail to direct the respondent to seek relief before the National Labor Relations Board.

## ARGUMENT

### I.

The seniority provisions in question were clearly in the interest of the union as a whole because they served successfully to reintegrate all veterans in the civilian economy after World War II and thus avoided repetition of the bitter conflict between veterans and organized labor which took place after World War I due to the failure of organized labor at that time to make provision for the restoration of veterans to civilian and industrial life.

This Court had occasion in the case of *Aeronautical Industrial Dist. Lodge 727 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, to pass on a problem substantially similar to that presented by the instant case. In that case the Court had to rule on the question whether World War II veterans were unlawfully deprived of their statutory right to reemployment by a seniority clause in a collective bargaining agreement which gave seniority preference to certain union officials, irrespective of their hiring date; over all other employees. It was held that layoffs of World War II veterans caused by these seniority provisions did not violate the reemployment rights of such veterans because the negotiation of these clauses by the collective bargaining representative followed common practice among labor unions and was not arbitrary or discriminatory. The Court found as particularly persuasive the fact that the provisions in question were in the interest of all the members of the represented group of employees.

It is submitted that the reasoning in the *Aeronautical Industrial Lodge* case should persuade this Court that the provisions under attack in the instant case should also be upheld on similar grounds. (It should be noted at this point

that the Court of Appeals was persuaded and held in the instant case that no rights under the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. 301, of Huffman and other World War II veterans with prior employment at Ford's had been violated but that the clauses were improper because they were unreasonably discriminatory and not in the interest of the union as a whole and therefore violated the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. 141.)

The effect of the provisions here in question was as follows:

Veterans with service at Ford Motor Company before military service received seniority credit for the time actually spent at Ford as well as for the time spent in military service. Their original hiring date thus determined their seniority standing even though their actual service at Ford was interrupted by a period of military service of varying duration. Veterans who first went to work at the Ford Motor Company after military service received similar seniority credit for the time spent in military service. Their standing on the seniority roster is therefore determined by their date of entry into or duration of military service. The operation of the clause thus assured the veteran with no prior employment at Ford that his seniority standing would not be prejudiced in favor of one who went to work at Ford on a date later than the veteran's entry into military service. In other words, early entry into military service was rewarded, and only at the expense of those who subsequent to that time and after the President had declared an unlimited ~~national~~ emergency, first hired in. We shall argue at length below that such provisions were clearly reasonable. In addition, however, it is our contention that the negotiation of these provisions represented a vital interest of the entire union, indeed of the

entire labor movement, because only by the negotiation of such provisions could World War II veterans be assured of some degree of employment security after World War II. In the absence of these provisions the following situation would have arisen: World War II veterans with no prior employment at Ford (or elsewhere) after commencing work at Ford would have been outranked in seniority by all those employees who commenced their industrial employment during the war. They would have been outranked in seniority by a large number of employees with no military service. It would not have been unreasonable for such veterans to feel that military service was the cause for their delay in entering industrial employment and that they were being penalized by virtue of having been in military service. It would not have been unnatural for such veterans to resent deeply the seniority preference granted to employees who were engaged in industrial employment while they were in the Armed Forces, to resent deeply the seniority system which placed them under this handicap, and to resent bitterly the labor organization which negotiated and enforced such a seniority system. The recession of economic activity and consequent lowered employment which was anticipated after World War II was an important additional source of such possible resentment.

Petitioner herein, and organized labor in general, feared the consequences of the situation described above. The experiences of organized labor in the United States after World War I are ample evidence of the fact that these fears were not unjustified. Headlines such as "Ex-soldiers break strike on taxi cabs" were typical of the type of situation prevailing after World War I. It was a common practice to use ex-soldiers as armed guards and strike breakers and discharged servicemen frequently sought to

take the jobs of other workers who were on strike.<sup>2</sup> Serious problems arose in connection with women who had been employed during the war and who after the war occupied jobs needed and sought by ex-servicemen. Situations arose in which ex-servicemen were pitted against each other. In Seattle, for instance, two recently discharged soldiers were refused re-instatement by their employer unless they tore up their union cards. When the veterans refused to quit the union or give up their claims to the jobs, the employer hired two non-union ex-servicemen, whereupon the union called a strike in which ex-soldiers openly scabbed while wearing chevrons to indicate their veteran status.<sup>3</sup>

Neither government nor management and labor were prepared for the problems of readjustment to a civilian

<sup>2</sup> The following observations are made by Clarence M. Weiner in an unpublished Ph. D. thesis entitled: *Organized Labor and Veterans, Problems and Policies in the Re-Employment of Veterans under the Selective Service Act of 1940* (Madison July 1948, on file at University of Wisconsin), at page 2:

"Widely scattered areas experienced violence and disorder as recently discharged servicemen of World War I sought to take the jobs of other workers on strike. In the spring of 1919 New England was being scoured for ex-soldiers to act as strike-breakers in Worcester, Mass. In New York City nearly a thousand ex-servicemen had replaced 'alien strikers' in a number of shoe factories. In Toledo, Cleveland, Chicago, Butte, Seattle, Tacoma and other places there were serious incidents in which veterans and non-veterans found themselves battling over jobs."

Mr. Weiner also notes at page 5:

"During World War II there were again deep-seated antagonisms and tensions between servicemen and non-veteran workers. 'We may as well face it, the antagonism is there,' Labor Secretary Schwellenbach said in 1945. 'Unless it is solved it is going to be used to the detriment of collective bargaining and of the Nation.' (Washington D. C. Star., July 22, 1945.)"

See also R. S. Jones, *A History of the American Legion*, Chapter XIII and XIV (New York 1946); *Proceedings of the National Conference of Social Work*, (1919) page 392; *Senate Reports*, 67th Congress First Session, Volume 1, Senate Report No. 37.

<sup>3</sup> Mary Frost Jessup, *The Public Reaction to the Returned Service Man After World War I*. (U. S. Dept. of Labor, Bureau of Labor Statistics, Historical Study No. 73), page 36.

economy.<sup>4</sup> The efforts of veterans, often violent in form, to secure jobs held by non-veterans were not surprising in light of the high level of unemployment which followed World War I.<sup>5</sup> Among the unemployed the number of veterans was particularly large because they had lost considerable time in the race for job tenure due to their military service. For a detailed analysis of this entire problem, see Mary Frost Jessup, *The Public Reaction to the Returned Serviceman After World War I.* (United States Department of Labor, Bureau of Statistics, Historical Study #73, Washington, 1944), pages 16-17, pages 23-24. The author at page 40 concludes as follows:

"Even more important is the obvious lack of an effective overall re-employment policy involving the

<sup>4</sup> In contrast to the World War I experience, the Retraining and Re-employment Administration of the Department of Labor, after consultation with the Business Advisory Counsel to the Secretary of Commerce, the National Association of Manufacturers, the Railway Labor Executives Association, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the American Federation of Labor and the Congress of Industrial Organizations, in an effort to assist in the process of reintegration, to minimize the competitive disadvantage apparent in long term absence from civilian employment and to help veterans obtain and hold suitable jobs, published a statement of principles for the guidance of government, management and labor (R. 58-59). Among the principles enumerated and endorsed by Secretary of Labor Schwellenbach in his *Statement of Employment Principles* (Oct. 7, 1946), was the following:

"(13) \* \* \* Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service connected injuries or disabilities either through hospitalization or vocational training." (Italics supplied.)

<sup>5</sup> See M. James, *A History of the American Legion*, page 239 ff. (New York 1923); National Bureau of Economic Research, *Business Cycles and Unemployment*, pages 58 and 59 (New York 1923); *The 19th Century and After*, Volume 88, page 670 (1920); F. Maurice, *The Employment of Ex-Servicemen*, Literary Digest, Volume 73, pages 40-46 (April 22, 1922); *The Independent*, Volume 98, page 481 (1919).

cooperation of labor, management, and government in all parts of the country and in communities of varying size that attended demobilization after World War I."

Mr. Weiner in *Organized Labor and Veterans*, cited in Footnote 2, observes as follows at page 24:

"The World War I experience greatly influenced developments during and after World War II. The earlier failure to plan for the postwar period resulted in economic dislocation and unemployment that coincided with demobilization. The failure to provide veterans with reemployment rights and other readjustment aids threw veterans of World War I into job competition with other workers and resulted in violence and strikebreaking by ex-servicemen. In the decade following the Armistice the open shop 'American Plan' resulted in the loss by organized labor of a considerable part of its wartime gains. By the beginning of World War II however, organized labor had achieved much greater power, prestige and influence. It was able to pursue with considerable success, policies and programs designed to avoid the bitter experience that followed World War I."

The reemployment rights granted to veterans in the Selective Training and Service Act, 54 Stat. 890, 50 U. S. C. 308, made certain that no veteran who left a job to go into military service would lose seniority credit already accumulated or would lose seniority credit he would have accumulated had he not left for military service. This, however, did not protect in any way the large number of veterans with no previous work experience. Mere reemployment rights therefore would have left a large number of dissatisfied and possibly unemployed veterans in much the same position as most veterans after World War I. These veterans would have found themselves, because they had been

in military service, at the disadvantage, seniority-wise, already discussed. The dangerous potentialities to the petitioner and the labor movement in general of such an important and dissatisfied group were such that it was necessary for the petitioner to negotiate the clauses here under attack for the benefit of veterans not previously employed, quite apart from the fact that such provisions, as we shall show below, were a fair and reasonable solution of a difficult industrial problem.

For the respondent Huffman to argue and for the Court of Appeals to hold that the clauses in question are not for the benefit of the entire union is therefore unrealistic and ignores some of the elemental facts in the history of the American labor movement. The petitioner's program for the readjustment of veterans after World War II, of which the provisions here under attack were an integral part, aside from being based on sound and patriotic motives, served to avert what may have endangered the very existence of the petitioner, and certainly served to avert serious industrial strife and unrest. It cannot reasonably be argued therefore that these provisions, because in their immediate application they benefited a particular group, were not in the interest of the union as a whole. For that reason a main segment of respondent's argument and a major basis for the Court of Appeals' decision must fail. This Court in *Aeronautical District Lodge 727 v. Campbell*, 337 U. S. 521, 527-529, 69 S. Ct. 1287, 1290, 1291 has held that seniority provisions, although favoring some particular group, are valid if in the interest of the entire group represented by the union. It is submitted that such reasoning should apply to the seniority provisions involved herein and that these provisions are valid because they are in the interest of the union as a whole.

## II.

The seniority provisions here under attack were reasonable, and therefore within the authority of the statutory collective bargaining representative to negotiate, because:

- (a) In granting seniority credit to all veterans for time spent in military service these clauses made certain that no veteran would lose or be denied seniority credit because he performed military service;
- (b) The clauses made certain that all veterans would be treated as if they had never been required to leave civilian life, thus preventing rather than causing discrimination based on military service.
- (c) The clauses enabled unions and employers to procure a young and competent membership and employment force by attracting veterans whose very youth at the time of entering military service precluded previous employment experience.

The Court of Appeals held the seniority clauses here under attack to be discriminatory within the meaning of the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173. In that case a seniority system had been established which systematically discriminated against a certain group of employees because they were Negroes. This Court held that such discrimination violated the obligation of the union, as the exclusive collective bargaining representative under the Railway Labor Act, 48 Stat. 1185; 45 U. S. C. 151-188, to represent fairly all employees in the collective bargaining unit. The Court found that the discrimination there involved was both "hostile" and not based on "differences relevant to the authorized purposes of the contract". However, this Court recognized in the

\* Other decisions, also arising under the Railway Labor Act and following the *Steele* case are: *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 239; 70 S. Ct. 14, 18; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 65 S. Ct. 235; *Brotherhood v. Howard*, 343 U. S. 768, 72 S. Ct. 1922.

*Steele* case that unions, in the negotiation of collective bargaining agreements, must make classifications and draw distinctions within the represented group of employees and limited its holding to *hostile* discrimination and *irrelevant* classifications such as would be involved in racial discrimination. It cannot follow from this decision, contrary to the respondent's insistence, that classifications which are neither hostile nor unreasonable amount to illegal discrimination.

It should be noted in this connection that the Court of Appeals uses the word "discriminate" as though, in all cases, discrimination is evil. This is not so, either in law or in common usage. *Webster's International Dictionary*, Second Edition, says to discriminate means:

"To serve to distinguish; to mark as different, to differentiate."

"To separate (like things) one from another in comprehension or use by discerning minute differences."

"To make a distinction; to distinguish accurately; as to discriminate between fact and fancy; also to use discernment."

"To make a difference in treatment or favor (of one as compared with others); as to discriminate in favor of one's friends; to discriminate against a special class."

The Court of Appeals seems to assume that discriminating inherently involves differentiating improperly. "Discriminate" alone is ambiguous. Unless we know the grounds of the discrimination, we cannot judge whether it is proper or improper. Differentiating in good faith, not in a way that the law forbids or in a way that interferes with inherent rights, is not improper. There is no question here of good faith. Nor can it be argued that the petitioner's

action here was either unreasonable or based on facts which the union had no authority to consider in drawing distinctions or making classifications among the represented group of employees. The *Steele* case and cases following it appear, by analogy, to have imposed the standards of the 14th Amendment as those by which to test the validity of collective bargaining provisions. We read the *Steele* case and the cases cited therein as showing that the test which this Court had in mind as to whether or not particular action of a statutory collective bargaining representative was proper is, in substance, the same test which is applied to the action of legislatures. Thus it was observed by the Court at 323 U. S. 202, 65 S. Ct. 226:

"We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. *J. I. Case Co. v. National Labor Relations Board*, *supra*, 321 U. S. 335, 64 S. Ct. 579, but has also imposed on the representative a corresponding duty."

Of interest also are the cases cited in support of the proposition that discrimination by the union based on irrelevant differences such as differences in race is illegal. The Court on the one hand cites a number of decisions in which it had held that statutory discriminations based on reasonable differences are not a denial of equal protection of the laws,<sup>7</sup> and, on the other hand cites decisions in which it

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<sup>7</sup> *Carmichael v. Southern Coal and Coke Co.*, 301 U. S. 495, 57 S. Ct. 868; *State of Washington v. Superior Court*, 289 U. S. 361, 53 S. Ct. 624; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 55 S. Ct. 538.

was held that statutory or administrative discrimination based on race is not founded on a reasonable or relevant difference and is therefore an unconstitutional denial of equal protection or due process.<sup>8</sup> It must be concluded from this analysis that this Court in the Steele case intended that the action of statutory collective bargaining representatives be judged by substantially the same standards employed in judicial view of the action of legislative bodies. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 S. Ct. 576. The same conclusion is reached in a Note at 65 Harvard Law Review 490 entitled *Duty of Union to Minority Groups in the Bargaining Unit*. It is there stated:

"The collective agreement that emerges from management-union negotiations is a jointly promulgated set of principles governing the industrial life of the employees in the bargaining unit. It alone establishes the terms and conditions of employment for union and non-union employees, majority and minority groups alike. Thus the labor contract resembles legislation rather than the traditional private contract."

Speaking of the finality which courts often accord to a labor agreement the Note goes on to say:

" \* \* \* such finality would not be objectionable if on review the courts would extend the *Steele* doctrine into non-racial situations to test the classifications on the theory that the Equal Protection Clause applies to safeguard minority interests generally; or more conservatively that it is the criterion against which the discrimination is to be judged.

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<sup>8</sup> *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064; *Yu Cong Eng. v. Trinidad*, 271 U. S. 500, 46 S. Ct. 619; *State of Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 59 S. Ct. 232; *Hill v. Texas*, 316 U. S. 400, 62 S. Ct. 1159.

"Thus, the constitutional analogies should preclude the union from legislating to deprive the individual of existing rights growing out of the employment relation, in much the same fashion as a political unit would be prevented from confiscating property without compensation. But when the collective agreement modifies expectancies grounded in prior contracts, such as seniority rights, no such rigid proscription seems necessary. The constitutional criteria would here require that solution of economic problems be reasonable, entailing a weighing of the majority interests to be served against the individual expectancies upset. The majority representative should be accorded a wider range of discretion where the agreement looks solely to the future, since such legislation does not interfere with present expectancies. The only requirement in this case which the constitutional standards demand is that a rational solution to the industrial problem be found. Implicit in the latter two cases is a need to consider the alternatives open to the union, the difficulty of resolving the problem, industrial practices which have been adopted in the past to deal with similar situations, and the result which will best promote sound industrial relations."

Commenting on the case of *Britt v. Trailmobile Company*, 179 F. 2d 569 (C. A. 6), cert. denied, 340 U. S. 820, 71 S. Ct. 52, where the Court of Appeals upheld the right of a collective bargaining representative to remove as many as 10 years from the accumulated seniority of certain employees following a merger of two corporations and the combination of their working forces, the Note states:

"The 10 to 1 ratio of the Trailer employees to Highland employees suggests that the line of least-resistance and least strife was the one chosen. Although the solution was not the most reasonable, and in some instances where the same problem has arisen integration of seniorities has been achieved, the re-

sult was at least rational. No more than this is required of economic legislation under the Equal Protection Clause."\*

The Note concludes:

"\* \* \* where explicit labor policies are not involved, but rather questions of industrial adaptation, the union should be able to function with a fairly free hand \* \* \*. The type of review which the courts have been accustomed to apply to legislation should give the best result."

For an application of these standards, see *Jennings v. Jennings*, Ohio Ct. App. (1949) 91 N. E. 2d 899; 24 Lab. Rel. Ref. Man. 2242 and *Hess v. Trailer Co. of America*, 17 Ohio Supp. 39, 31 Ohio Op. 566 (C. P. 1944), affirmed, 31 Ohio Law Rep. 51, 18 Ohio Bar 314 (1945).

In testing the validity of the petitioner's action in the instant case we may thus look to standards applied by this Court in the review of legislation. This standard was summarized by Justice Stone in the case of *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584, 55 S. Ct. 538, 540:

"A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it."

In this connection, the definition of "reasonable" found in the dissenting opinion of Justice Brandeis in the case of

\* Chief Judge Simons held in the *Britt* case: " \* \* \* Whatever we might think of the fairness of the differentiation, the discrimination was in pursuance of the bargaining process and not without some basis, fore stalled a strike and was therefore not invalid. *Aeronautical Industrial District Lodge 727 v. Campbell, supra.*"

*Quaker City Cab Company v. Penna.*, 277 U. S. 389, 406, 48 S. Ct. 553, 556 is of interest:

"\* \* \* the equality clause requires merely that the classification shall be reasonable. We call that action reasonable which an informed, intelligent, just-minded, civilized man could rationally favor."

It is now incumbent upon us to apply these standards to the petitioner's action in the instant case. We have already explored the consequences which would in all probability have flowed from a failure to adopt the seniority agreements here under attack. We have indicated the historical background of post World War I conflict between veteran and non-veteran workers. This history clearly justified the apprehension of petitioner of a repetition of such conflict unless a reasonable accommodation of the interest of both groups in security of employment was effected. We submit that these considerations, without more, adequately qualify the seniority agreements as reasonable and therefore valid under the standards of judgment which we find in the decisions of this court. In addition, however, general considerations of fairness to returned servicemen made the negotiation of these clauses not only a rational but possibly the *most* reasonable solution of the problem of veterans' readjustment to civilian and industrial life. The seniority clauses here under attack represent a decision on the part of the petitioner to make well deserved provision for *all* World War II veterans represented by petitioner in collective bargaining. Consideration for training and qualifications attained while in military service was accorded such veterans. It was decided to treat a veteran without prior service with the company as one whose entry into employment was delayed by military service and to treat the event of his induction into service as equivalent to having hired in at that time. It was reasonable to assume that the ma-

jority of the beneficiaries of these seniority clauses would probably be youthful volunteers and the clauses represent an effort to avoid penalizing early military service by not letting it operate to defer the accumulation of seniority which might otherwise have accumulated. This course was adopted even though it afforded some slight prejudice to the few men who, after June 21, 1941, and after the President declared a state of unlimited national emergency, first hired in. The man who voluntarily or otherwise was early in military service was rewarded, and only at the expense of people who in the same period of national emergency headed for the security of a factory and possible deferment from the draft. Furthermore, during World War II, a considerable number of married women and other older persons were hired by employers engaged in war production. It was the belief of the petitioner that in the face of the predicted decrease in employment during the immediate post-war period, veterans should be given preference in job security over such persons who in all probability were in smaller actual need of remunerative employment. The seniority clauses here under attack aided in accomplishing that purpose.<sup>10</sup>

The economist Frederick H. Harbison, recognized the validity of the petitioner's reasoning in a booklet entitled *Seniority Problems During Demobilization and Reconversion* (Industrial Relations Section, Department of Economics and Social Institutions; Princeton University, Princeton, N. J. 1944). He notes at pages 12-14:

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<sup>10</sup> These same considerations persuaded Congress to give similar credit for time spent in military service to all World War II veterans who are civilian employees of the United States Government. Veterans Preference Act, 58 Stat. 387, 5 U. S. C. Sec. 851-869. The government in its role as an employer of a large number of people thus recognized and adopted prior military service, irrespective of prior employment, as a valid basis for granting employment and job retention rights.

"Many soldiers and sailors entered military service from schools or colleges and consequently never were previously employed. As stated above, others had only temporary jobs entitling them to no or to limited seniority status. Still others, who once had permanent employment, will have seniority rights which are valueless because of the elimination of the particular company or plant to which such rights were attached. Another group of veterans may allow their seniority to lapse because they are unwilling, for one reason or another, to return to the previous employment. *To the extent that the acquisition and retention of good jobs is closely bound up with seniority, the veterans having no seniority rights will have one strike against them in the post-war labor market.*

"Moreover, the veterans without rights are likely to outnumber those who have valid seniority rights. Had such veterans not been in the military service, they probably would have found jobs as war workers and might have acquired both skill and seniority constituting a substantial investment in employment security. For this reason, a very strong attack on seniority barriers may be made by post-war veterans' organizations on the grounds that they constitute unfair discrimination in employment. It is in this connection that the conflict between veteran status and seniority status may become most acute.

"Employers in the automobile industry first suggested that veterans with no pre-service industrial employment should be granted artificial or 'synthetic' seniority for the time spent in military service, such accumulated seniority to be applicable in any plant where tenure of employment and advancement are affected by an individual's seniority status. They pointed out certain advantages to a plan of this kind. Generally speaking, the most alert and best qualified young men have been taken by the Army and Navy, while industry has been forced to

scrape the bottom of the manpower barrel for handicapped workers, women, older employees and others not normally part of the pre-war labor force. Employment standards of necessity have been lowered, and many working forces are now composed of a large proportion of relatively inefficient workers. Under many agreements such workers have secured seniority status during their period of wartime employment. These workers could be displaced after the war in an orderly manner by qualified veterans whose 'synthetic' seniority was greater than the regular seniority of the wartime employees. In this way, of course, employers might be able to procure a more competent and stable post-war working force provided they were able to establish sufficiently high standards for qualification for jobs. Thus, in addition to its patriotic appeal, this proposal has definite practical value.

"At least some of the displaced war workers may be able to find peace-time jobs before the greater proportion of servicemen are released. Thus war workers will have an additional head start over returning veterans in respect to seniority if they are able to use the seniority they acquired in war employment to claim permanent jobs in reconverted plants. *Considered from this angle, the demand on the part of veterans for 'synthetic' seniority equal to the number of years spent in military service cannot be construed as an attempt to secure preferential treatment, but only as a means of preventing discrimination and of securing equality of opportunity to employment.*" (Emphasis added.)

The Supreme Court of Tennessee in 1950 had occasion to review the propriety of seniority provisions substantially similar to those involved in the instant case. In *Haynes v. United Chemical Workers, C. I. O.* 190 Tenn. 165, 228 S.W. 2d 101, provisions in a contract between the union and employer granted to veterans of World War I and II sen-

iority credit equal to 25% of the time spent in the armed forces during such wars, despite the fact that they had not previously been employed by the company. Other employees sought an adjudication that such provisions were invalid as impairing the seniority rights of non-veterans as well as those veterans who had been employed by the company before entering military service. The validity of the contract was upheld on the following reasoning:

"Section 11, above provides, in effect that veterans who enter the service of the company prior to a certain date will receive seniority credit to a limited extent for the time spent by them in the defense of our country. Veterans are thus given a measure of job security by reason of their military service so as to provide for them a fraction of the job security they would have had, if instead of serving with the armed forces, they had been in the employ of the company.

"(4) It seems to us that the provisions of this Section, instead of being against 'public policy', are in accord with the accepted policy of the State and Nation. It has been the policy of both the State government and the Federal government to give veterans preferences and other benefits not afforded to other citizens because of their military service.

"It is argued on behalf of the appellants that the provision of the contract in question above quoted comes within the holding of the Supreme Court of the United States in the case of *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, 185. In the *Steele* case an entire racial group, who could not be members of the Union, the exclusive bargaining agent, were systematically discriminated against. That clearly is not the situation in the case before us. The provision of the contract complained of herein instead of being an exclusion of a specified group as was in the *Steele* case, is in effect, a provision in accord with the feeling of most

of the people in the Country. To strike this provision down and say that it is void and against public policy, to include in a contract slight preference in favor of veterans, would be slapping the feeling of the people of the State and Nation in the face."

In concluding this phase of the argument, we submit that these seniority clauses were on their face a reasonable accommodation of conflicting interests within the total group represented by the union, were reasonably calculated to conserve the interests of the entire group and of the union as its representative and were therefore valid under the criteria of judgment established in the *Steele* case.

### III.

The theory and philosophy of collective bargaining in a free economy, as expressed by Congress in the Labor Management Relations Act, 1947, requires that the discretion of the collective bargaining representative as to what are, "relevant" factors for purposes of classifying represented employees in contract negotiations be upheld unless the exercise of such discretion gives evidence of hostility or malice towards a particular group, is illegal, or in violation of public policy.

It is basic public policy of the United States to support a free economy. It is a basic prerequisite of a free economy that decision-making power be decentralized. See J. K. Galbraith, *American Capitalism, The Concept of Counter-vailing Power* (Boston 1952) Chapter XII. This approach favors the practice of having economic decisions made by private units rather than public authorities. It has been found that, insofar as the employment relationship and wage structure is concerned, the process of free collective bargaining between labor unions and employers best implements this philosophy and practice. See Chas. C. Killingsworth, *Organized Labor in a Free Enterprise Economy*,

Chapter 15 of *The Structure of American Industry*, edited by Walter Adams (New York 1950). It follows from this that the widest possible discretion should be given to the parties in the collective bargaining process and that courts should substitute their judgment as to what is a proper labor contract for the judgment of the parties only in a very limited number of circumstances. It will be the purpose of this section of the argument to explore in some detail both the desirability of allowing a wide discretion to the negotiating parties in the collective bargaining relationship and to clarify further the standards to be employed in reviewing the exercise of such discretion.

The *National Labor Relations Act*, 61 Stat. 136, 29 U.S.C. 151, is designed to effectuate the basic economic principles enumerated above. Section 9 (a) of that Act gives statutory collective bargaining representatives exclusive authority to negotiate collective agreements for the entire represented group of employees irrespective of the desires of minorities within that group who might wish to engage in individual bargaining. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 S. Ct. 576; see also *Llewellyn v. Fleming*, 154 F. 2d 211 (C. C. A. 10); cert. denied, 329 U. S. 715. Congress imposed no limits on the scope of bargaining, or on the subjects concerning which employers and unions may bargain, or on the bargains they may reach, excepting only agreements which condition employment on union membership.<sup>11</sup> In addition, this Court has held that labor agreements may not violate other laws such as the Anti-Trust Laws. *Allen-Bradley Co. v. Local Union #3*, 325 U. S. 797, 65 S. Ct. 1533. Aside from these limitations Congress permitted the parties to collective bargaining the widest discretion as to the terms and sub-

<sup>11</sup> *Wallace Corp. v. NLRB*, 323 U. S. 248, 65 S. Ct. 238.

jects to be incorporated in collective bargaining agreements.

This was necessary under the statutory scheme established by Congress in the area of labor relations and in light of the general economic philosophy underlying that scheme. It would be inconsistent for Congress to give to a union on the one hand *exclusive power* to represent and bargain for a group of employees and on the other hand to require that the validity of the bargain reached must await a ruling from a court or other public authority.<sup>12</sup> If Congress had intended the latter result it would have provided, as the laws of some countries do provide, that collective bargaining contracts be submitted to public authorities for approval.

The position in which a large labor organization, representing hundreds of thousands of employees, finds itself is a further consideration in support of the freedom from all but limited judicial review for which we argue. Any union that represents a large unit of employees employed in many crafts and classifications, many departments, many plants, in many localities and different circumstances, has the difficult problem of reconciling differences in the interests of many classes and groups.

It is in the union's interest to reconcile these differences as best it may and to accommodate its policies and practices to the differing and sometimes conflicting interests of various classes or groups that comprise the bargaining unit, or who may become members of the unit. In doing this, it must weigh the effect on itself of whatever it does

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<sup>12</sup> See the dissenting opinion of Mr. Justice Frankfurter in *Elgin J. & E. Ry. Co. v. Burley*, 327 U. S. 661, 668, 66/S. Ct. 721, 724: "When peaceful settlements between carriers and brotherhoods are subject to such hazards [of attack in litigation], the carriers can hardly be expected to negotiate with a union whose authority is subject to constant challenge."

to the greater or lesser advantage of one group or class as against another; and it must weigh the effect of what it does on the solidarity of the unit and on the bargaining strength that flows from that solidarity. It is interested in holding itself together and in holding to the greatest extent possible the loyalty of all elements of the unit. Bitter dissidence in a small group may be more destructive of its solidarity and bargaining strength than mild disappointment in a larger one.

In the absence, at any rate, of a clear showing of fraud or bad faith on the part of the union's bargainers, no justification can exist under the National Labor Relations Act or any other law, or in common sense, for a court or other branch of the Government to substitute its judgment for the union's on what is best for the union as a whole.

The Court of Appeals ignores the well known practice of most unions to submit their proposed collective agreements to their members for ratification. In the present case, it was entirely foreseeable that the clause in question could affect adversely the interests of the great majority of Ford's employees, consisting of employees who were not veterans and those who left Ford for the armed services and thereafter returned to work. May a dissident minority, or even a majority of the present employees now, years later, reverse the majority that approved the clause and set aside all that the parties did under it?

These considerations were ably summarized by the Court in the case of *Foster v. General Motors Corp.*, 191 F. 2d 907 (C. A. 7). In that case a collective bargaining agreement which denied returned veterans vacation pay because qualifying for it required actual employment at a time when such veterans were in military service, was held *not* to violate the rights of such veterans under the Selective Training and Service Act. The Court stated:

"After all, a union as an authorized bargaining agent no doubt is legitimately interested in attaining the best possible contract for its members as a whole, and with numerous diversified interests among its members, especially when the membership is large, there is nothing strange or unnatural if some segments of its membership are placed at disadvantages when compared with others."

See also *Fries v. Pennsylvania Rd.*, 195 F. 2d 445 (C. A. 7) and *Ryan v. N. Y. Central Railroad Co.*, 267 Mich. 202, 255 N. W. 365.

It follows from these considerations that judicial nullification of collective bargaining agreements must be limited to a small number of specific situations. One is where the agreement violates express national policy regarding collective agreements as set out in the Labor Management Relations Act, 1947. Another is where constitutional standards of equal protection or due process are violated. A third instance would be presented by a situation where the agreement is against public policy. The instant agreement is manifestly not invalid by any of these criteria. The union's action was demonstrably reasonable and in harmony with public policy as well as public sentiment. In effect then what the Court of Appeals has done is to say that it does not believe the union's action in the instant case to have been wise. The Court of Appeals has chosen to substitute its judgment for that of the negotiating parties.

Courts have almost uniformly held that unless the union's action can be shown to be hostile, fraudulent, arbitrary or against public policy, such action must be accorded finality for purposes of judicial review. We again draw this Court's attention to standards which it has itself established in the *Steele* case in reviewing the action of labor

unions, such standards being analogous to those which it employs in reviewing the constitutionality of legislative action under the 14th Amendment. See also *Haynes v. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S. W. 2d 101; *Shaup v. Brotherhood*, 223 Ala. 202, 135 So. 327; *Yazoo v. Mitchell*, 173 Miss. 594, 161 So. 860; *Allen-Bradley Co. v. Local Union #3*, 325 U. S. 797, 65 S. Ct. 1533. *Jennings v. Jennings*, Ohio Ct. App. (1949) 91 N. E. 2d 899, 24 Lab. Rel. Ref. Man. 2242.

The position which the respondent Huffman is urging this Court to adopt is one which states flatly that an employee's pre-employment military service is not a relevant factor for the union to consider in collective bargaining negotiations within the meaning of the *Steele* case. By the same token he argues that an employee's family situation and background or experience before working for his present employer are all irrelevant factors not within the legitimate concern of the collective bargaining representative. Respondent seeks to liken such differences to differences which are truly irrelevant such as differences in race, church affiliation or personal appearance. The respondent's contentions are clearly incompatible with the theory of collective bargaining discussed above, nor are they in accord with actual current collective bargaining practice. The following factors are enumerated by Leonard J. Smith in *Collective Bargaining*, Prentice Hall, Inc. (New York 1946) at page 191 as those which should be and are considered by parties negotiating a seniority system: length of service; merit or efficiency; marital or family status; abilities (physical, mental, experience). Frederick H. Harbison in *Seniority Policies and Procedures as Developed Through Collective Bargaining* (Industrial Relations Section, Department of Economics and Social Institutions, Princeton University, Princeton, N. J. 1941) at page 38 writes:

"Such factors as family status, number of dependents, place of residence, and citizenship, are often mentioned in seniority provisions."

On occasion industry-wide seniority systems have been set up under which an employer grants seniority credit to an employee for employment service elsewhere in the industry. See *Labor and Nation*, November-December 1947, page 13; 21 Lab. Rel. Ref. Man. 20; see also Bureau of National Affairs, *Collective Bargaining Contracts* (Washington 1941), page 493. Seniority preference is frequently given to physically handicapped employees who would have difficulty finding temporary work during lay-offs. See Malcolm W. Welty; *Labor Contract Clauses in the Automotive and Aviation Parts Manufacturing Industry* (Detroit 1945) pp. 248 ff; Bureau of National Affairs, *Collective Bargaining Contracts* (Washington 1941) page 290, 291; Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts*; 20:551 at page 557. In fact, the very clauses here under attack have received widespread recognition. United States Department of Labor, Bureau of Labor Statistics Bulletin #908-11, *Collective Bargaining Provisions, Seniority* (1949), page 13; United States Department of Labor, Bureau of Labor Statistics, *Reemployment of Veterans under Collective Bargaining*, (October 1947) pp. 26 ff; 15 Lab. Rel. Ref. Man. 2535; 19 Lab. Rel. Ref. Man. 29. See also *Haynes v. United Chemical Workers*, 190 Tenn. 165, 228 S. W. 2d 101 approving seniority provisions similar to those here under attack.<sup>13</sup> In fact, it should be pointed out that the seniority of respondent Huffman, who is a World War II veteran, which

<sup>13</sup> For approval of similar provisions in a labor agreement see Volume 25, *War Labor Reports*, p. 217; 16 Lab. Rel. Ref. Man. 1864. See also Bureau of National Affairs, *Military Leave Policies of 500 Corporations*, Special Survey (Washington 1950), pp. 13, 17.

he claims to have been undermined, exists only by virtue of the fact that he received exactly that which he complains of namely, seniority credit for the time spent in the armed forces. *Huffman's seniority with Ford is based upon a principle of accepting military service as equal to service for Ford.* He accepts this principle and wields it as the basis for this action, yet he would deny the application of the very same principle to another as being based on irrelevant facts, merely because all of the latter's military service came before employment:

It was held that labor unions may consider such social factors as marital status and such economic factors as the great depression as relevant for purposes of making distinctions in seniority agreements in the case of *Hartley v. Brotherhood*, 283 Mich. 201, 277 N. W. 885. In that case it was held to be proper, in view of economic conditions to reduce drastically the seniority rights of married women, thus making certain that those who needed employment most would hold it longest. The Court in upholding the action of the union said:

"This agreement was executed for the benefit of all the members of the brotherhood and not for the individual benefit of the plaintiff. When by reason of changed economic circumstances, it became apparent that the earlier agreement should be modified in the general interest of all members of the brotherhood it was within the power of the latter to do so, notwithstanding the result thereof to plaintiff . . . ."

"A different situation might be presented/had the agreement of 1932 been accomplished as a result of bad faith, arbitrary action or fraud directed at plaintiff on the part of those responsible for its execution."

See also *Schlenk v. Lehigh Valley R. R. Co.*, 74 F. Supp. 569, (D. C., D. N. J.); *Gauweiler v. Elastic Stop Nut Corp. of America*, 162 F. 2d 448, (C. A. 3).

The unreasonably narrow interpretation of a collective bargaining representative's authority for which respondent argues becomes even more untenable when one considers that it would make impossible the negotiation of pension and insurance benefits varying according to the number of a retired employee's dependents. We submit that the number of dependents is clearly a "relevant" factor which a labor union may in good faith consider in negotiating for employee benefits.

It follows therefore that the Court of Appeals erred in holding that the provisions granting seniority credit to veterans not previously employed for time spent in military service were invalid because they were based on factors not within the authority of the collective bargaining representative to consider. To the contrary, it is submitted that these provisions were not only within the authority of the union to negotiate but were in fact a most reasonable answer to the problem which they were designed to meet. In any case, the union's action in negotiating these clauses meets any test of validity which a court can properly apply in light of the system of free collective bargaining which is the public policy of the Nation.

## IV.

A great variety of seniority systems (or employment security arrangements) is available to the negotiating parties in collective bargaining, and all such systems, insofar as they are reasonable and not against public policy, should be and generally have been sustained under judicial review.

The Court of Appeals held the seniority provisions here under attack to be invalid on the following grounds:

"Plainly, a contract which, in the case of lay-off, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford Plant in 1945 is retained in lay-offs over Huffman, who entered in 1943, Huffman is discriminated against" (R. 38).

The Court, in effect, holds that a seniority system which may, in any application fail to recognize actual employment experience is inherently discriminatory unless some valid reason for this failure exists. It then apparently assumes that the veteran who was first hired by the company will necessarily or usually have most actual work experience. The assumption ignores the fact that an employee may have entered the armed forces within a matter of days or weeks after he was first employed by Ford and remained in the service many months after other veterans had returned and resumed, or in the case of new employees, begun, their employment with Ford. It is apparent that a veteran who did not work for Ford prior to his entry into military service, as well as other veterans who did work for Ford, may have much more actual work experience than the veteran who was employed by Ford for a short period prior to his military service. Under the provisions of Sec-

## APPENDIX A

### Pertinent Statutory Provisions

*National Labor Relations Act*, 61 Stat. 140 ff, 29 U. S. C.

Section 157, Section 158 (b)(1), Section 159 (a) and Section 160 (a):

“157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(d) of this title. As amended June 23, 1947, 3:17 p. m. E. D. T. c. 120, Title I, 101, 61 Stat. 140.”

“158. Unfair Labor practices

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.”

“159. Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment."

"160. Preventing of unfair labor practices—Powers of Board generally"

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been, or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this sub-chapter or has received a construction inconsistent therewith."

*Railway Labor Act, 48 Stat. 1187, 45 U. S. C. Section 152:*

"152. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

*Selective Training and Service Act of 1940*, 54 Stat. 890,  
50 U. S. C. 308:

"Any person who is restored to a position • • • shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority • • •."

*Veterans Preference Act*, 58 Stat. 388, 5 U. S. C. Section 852 and Section 853:

"852. Examinations; earned ratings; additional credit

In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under Section 851 (1), (2), (3), and (5) of this title, and five points shall be added to the earned ratings of those persons included under section 851 (4) of this title; *Provided*, That in examinations for the positions of guards, elevator operators, messengers and custodians, competition shall be restricted to persons entitled to preference under this chapter as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by a concurrent resolution of the Congress for such other positions as may from time to time be determined by the President. As amended Dec. 27, 1950, c. 1151, 2(a), 64 Stat. 1147."

"853. Credit for experience

In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she is

examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor. June 27, 1944, c. 287, 4, 58 Stat. 388."



tion 8 of the Selective Training and Service Act of 1940 (and absent the seniority agreement), the veteran who was employed by Ford prior to his entry into the service would have been, in every case, preferred over the veteran who was not, despite the fact that the former may have less actual work experience. This is because that Act gives the veteran who was employed before he entered the service seniority or experience credit equal to the time he spent in the service and does not give such credit to the veteran who was not so employed. This would have resulted in an inevitable discrimination against many more experienced veterans, who, though not employed before their military service, nevertheless hired in well before the return to the plant of other veterans who had been but briefly employed before the military service.

The operation of the seniority clauses in question may be illustrated as follows:

"A" is in all the following illustrations a veteran who, like the respondent Huffman, was employed by Ford before entering military service.

"A" hires in Jan. 1, 1942.

"A" goes into military service Jan. 1, 1944.

"A" returns Jan. 1, 1945.

"A" on Jan. 1, 1946, has three years of work experience and four years of seniority credit.

"B" goes into military service Jan. 1, 1941.

"B" hires in on Jan. 1, 1945.

"B" on Jan. 1, 1946 has one year work experience and five years of seniority credit.

"A" has more work experience and less seniority credit.

"A" hires in Jan. 1, 1941.

"A" goes into military service Jan. 1, 1942.

"A" returns Jan. 1, 1945.

"B" goes into military service Jan. 1, 1942.

"B" goes to work Jan. 1, 1943.

"A" on Jan. 1, 1946 has two years of work experience and five years of seniority credit.

"A" has less work experience than "B", but greater seniority credit.

"A" hires in Jan. 1, 1942.  
 "A" goes into military service Jan. 1, 1943.  
 "A" returns to work Jan. 1, 1945.

"A" on Jan. 1, 1946 has two years of work experience and four years of seniority credit.

"A" has less work experience than "B" and also has less seniority credit than "B".

"A" hires in Jan. 1, 1942.  
 "A" goes into military service Jan. 1, 1944.  
 "A" returns to work Jan. 1, 1945.  
 "A" on Jan. 1, 1946 has three years of work experience and four years of seniority credit.

"A" has more work experience than "B" and more seniority credit than "B".

"B" on Jan. 1, 1946 has three years work experience and four years of seniority credit.

"B" goes into military service Jan. 1, 1941.  
 "B" hires in Jan. 1, 1943.  
 "B" on Jan. 1, 1946 has three years of work experience and five years of seniority credit.

"B" goes into military service Jan. 1, 1943.  
 "B" hires in Jan. 1, 1945.  
 "B" on Jan. 1, 1946 has one year of work experience and three years of seniority credit.

It is evident from the Court's opinion that the discrimination it condemns results from the fact that the agreement will not, in every case, assure that the veteran with the greatest actual working experience is retained in case of

lay-off. The Court fails to recognize that the same defect was inherent in the seniority system under the Selective Training and Service Act of 1940 (and before the collective bargaining agreement).

In fact, an examination of the various situations which can result under the operation of the seniority provisions here involved reveals that these provisions are, in a variety of applications, unrelated to actual work experience with the particular employer. The operation of these clauses can work in favor of a veteran in Huffman's position (i.e., he might have greater seniority credit but less work experience than a veteran with no prior service with the company) as frequently as they can work in favor of a veteran like "B" in illustrations given above. On the other hand, the clauses in question can also operate so as to give greater seniority credit to the veteran with greater actual work experience. Admittedly, these provisions do not base seniority (i.e., job security) exclusively on actual work experience with the particular employer involved. Nor can Huffman argue that his seniority is based solely on such experience. Instead, the job security for all veterans is based, in part, on another "relevant" factor, namely, the amount of time which a veteran was required to spend in military service. The relevancy, for all purposes of collective bargaining, of this factor has already been argued at length.

The Court of Appeals has, in another respect, misconstrued the operation of the provisions here involved. The opinion of the Court of Appeals says (R. 34):

"The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services."

Throughout the remainder of the opinion, the Court adheres to this view of the question.

'But the class on behalf of which the plaintiffs sue consists of all employees, veterans and non-veterans alike, whose

"positions on the seniority roster at Ford's Louisville Works have been lower than \* \* \* their true hiring-in dates would entitle them by reason of the contract clause of whose validity complaint is made herein" (R. 5).

Thus, the class includes "non-veterans and veterans who formerly worked for Ford. It includes also veterans not previously employed by Ford who were first employed by Ford at about the same time as other such veterans who had had longer periods of military service.

Thus, the clause differentiates as between members of the very class that the respondent claims it favors.

This shows that the clause does not "discriminate" in favor of veterans against non-veterans, or in favor of one class of veterans as against another. What it does is to give all veterans what the law gives to some; credit for the time they spent in the armed forces.

The position which the respondent wishes this Court to adopt is that a seniority system which does not rigorously adhere to the practice of basing seniority on actual work experience with the particular employer is discriminatory and invalid. This position is clearly untenable and ignores a wide variety of employment security arrangements which in several ways need not necessarily be based on actual work experience with the present employer. Departmental seniority will in many instances impose hardship on those with greater plant-wide or employer-wide seniority. The worker with greater skill may be adversely affected by a seniority system based on length of service without regard

to skill. On the other hand, many contracts make special provision for exceptionally skilled workers, thus adversely affecting those with greater length of service. Seniority systems have been based on an employee's family status, thus adversely affecting both workers with greater length of service or greater skill. We have mentioned that work experience in the industry is occasionally used as a basis for determining seniority with a particular employer. An employee's training or educational qualifications might be used as a basis for job preference. Such an arrangement would be very much in the interest of many employers. Unless seniority is artificially restricted to length of service on a plant-wide (or, would the respondent insist, employer-wide?) basis, a great variety of systematic and orderly methods for operating a seniority system is available to the negotiating parties.<sup>14</sup> All such methods must be sustained by a court insofar as they are rational and do not evidence hostile or unreasonable discrimination against any group.<sup>15</sup>

<sup>14</sup> See Frederick H. Harbison, *The Seniority Principle in Union-Management Relations*, (Industrial Relations Section, Department of Economics and Social Institutions, Princeton University, Princeton, N. J. 1939).

<sup>15</sup> Examples of the widespread approval by the Courts of different types of seniority systems and manipulation therewith, in the absence of racial discriminations, fraud or caprice, may be found in a large number of judicial decisions:

*Schlenk v. Lehigh Valley R. R. Co.*, 74 F. Supp. 569 (D. C., D. N. J.);

*Gauweiler v. Elastic Stop Nut Corp. of America*, 162 F. 2d 448 (C. A. 3);

*Haynes v. United Chemical Workers*, 190 Tenn. 165, 228 S. W. 2d 101;

*Hartley v. Brotherhood*, 283 Mich. 201, 277 N. W. 885;

*Capra v. Local Lodge*, 102 Colo. 63, 76 P. 2d 738;

*Shaup v. Brotherhood*, 223 Ala. 202, 135 S. 327;

*Ryan v. N. Y. Central R. R. Co.*, 267 Mich. 202, 225 N. W. 365;

*Aden v. L. & N. R. R. Co.*, 273 S. W. 511 (Ct. of Appeals of Ky.);

*Donovan v. Travers*, 285 Mass. 167, 188 N. E. 765;

*Yazoo v. Mitchell*, 173 Miss. 594, 161 So. 860;

*Burton v. R. R.*, 148 Ore. 648, 38 P. 2d 72;

*Mayo v. Great Lakes Lines*, 333 Mich. 205, 52 N. W. 2d 665;

*Woolridge v. R. R.*, 118 Colo. 25, 191 P. 2d 882.

To deny parties to collective bargaining the widest possible discretion in the field of seniority would be to vitiate the collective bargaining process. We submit that the decision of the Court of Appeals, if allowed to stand, would have this adverse effect.

## V.

Application of the doctrine requiring exhaustion of administrative remedies requires that respondent should have resorted to the administrative processes of the National Labor Relations Board before seeking judicial relief against the petitioner.

The opinion of the Court of Appeals appears to assert immediate jurisdiction of the District Court over a union-unfair labor practice. This appears to us to be implicit in the assertion by the Court (R. 36) that the failure of the collective bargaining representative to represent the employees fairly and without discrimination violates the rights guaranteed them by Section 7 of the National Labor Relations Act, 61 Stat. 136, 29 U. S. C. 151. Thus the Court says:

"Section 157, 29 U. S. C. provides that the employees have the right to bargain collectively and 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' This means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another."

Section 157, 29 U. S. C., cited by the Court, is Section 7 of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947. Section 8(b) of that Act provides as follows:

"It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed them in Section 7 . . . ."

It would therefore seem to follow necessarily from the decision of the Court of Appeals that the alleged failure of the defendant labor organization to represent employees without discrimination restrains the employees in the exercise of rights guaranteed them by Section 7 of the Act and that the union is guilty of an unfair labor practice within the meaning of the Act. But, such a holding would be in derogation of the exclusive jurisdiction of the National Labor Relations Board. The National Labor Relations Act provides exclusive administrative procedures designed to remedy and prevent unfair labor practices. Thus, Section 10(a) (29 U. S. C. 160) provides as follows:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce."

These procedures have neither been resorted to nor exhausted in the instant case. Numerous decisions have held that these procedures, as established by the Act, confer upon the National Labor Relations Board exclusive original jurisdiction. *California Association v. Bldg. Trades Council*, 178 F. 2d 175 (C. A. 9); *Amazon Cotton Mills Company v. Textile Workers Union*, 167 F. 2d 183 (C. C. A. 4); *Amalgamated Association, et al. v. Dixie Motor Coach*, 160 F. 2d 902 (C. A. 8); *Bakery Drivers Union v. Wagshall*, 333 U. S. 437, 68 S. Ct. 630; *Costaro v. Simons*, 303 N. Y. 318, 98 N. E. 2d 454; *Wm. P. McNish v. The American Brass Company, et al.*, Supreme Court of Errors of Connecticut, April Term, 1952, 89 A. 2d 566, 30 Lab. Rel. Ref. Man. 2254.

The Court's attention is drawn to the fact that the *Steele* case *supra*, and other decisions applying its principle, involved collective bargaining representatives deriving their authority (and hence their concomitant obligations) from the Railway Labor Act. That statute, unlike the National Labor Relations Act, here involved, provides no administrative remedy to an employee who is discriminated against, thus making a strong case for granting immediate judicial relief, since an employee would otherwise be without any remedy.<sup>16</sup> In contrast, the administrative machinery of the National Labor Relations Act, provides adequate remedies before the National Labor Relations Board in those instances where the collective bargaining representative has breached its statutory obligations. As was argued above, the Court below held, in effect, that an unfair labor practice has been committed by the union. If so, Huffman had available the remedy of filing a charge of unfair labor practice before the National Labor Relations Board. Even in the absence of a finding that a specific unfair labor practice was committed the Board has afforded an administrative remedy to correct discriminatory representation by labor organizations. Thus, it follows that, in contrast to cases arising under the Railway Labor Act, there existed here an administrative remedy which was not, but should have been resorted to, even if the alleged discrimination here complained of is not a specific unfair labor practice within the meaning of the Act. The National Labor Relations Board, in the case of *RKO Radio Pictures, Inc.*, 61 N. L. R. B. 112, a representation proceeding, held that a certification which it had issued would be rescinded if it were shown that non-discriminatory representation had been denied to any group of employees in the bargaining unit. The Board in that case announced:

<sup>16</sup> See *Graham v. Brotherhood of Locomotive Firemen*, 338 U. S. 232, 239; 70 S. Ct. 14, 18.

"It is with deep concern, therefore, that we note intimations appearing in the record concerning the possibility that the unions may indulge in reprisals designed to prevent persons who have customarily performed both acting and extra work from continuing to do so. It should be emphasized in this regard that it is the duty of the exclusive representative of the employees in an appropriate bargaining unit to represent all employees therein without hostile discrimination and with a view to the promotion of their best interest. (Citations.)

"Should either the Guild or the Independent engage in such restrictive practices or otherwise circumvent the objectives of the Board inherent in this decision, the Board will not regard itself as precluded, upon consideration of the circumstances thus presented, from taking appropriate remedial action, including either a redetermination of the bargaining unit or revocation of the certification herein."

To the same effect is *Southwestern Portland Cement Company*, 61 N. L. R. B. 1217. A similar holding may also be found in the case of *Larus and Brothers Company, Inc.*, 62 N. L. R. B. 1075, where the Board stated:

"\* \* \* we have conceived it to be our duty under the statute to see to it that any organization certified under Sec. 9 (c) as the bargaining representative, acted as a genuine representative of all the employees in the unit.

"If it were not for the additional circumstances set forth below we should rescind the AFL certification."

The Board decided this case, a representation proceeding, in part on the authority of the *Steele* case and noted specifically that the policies which it was enforcing had *not* been developed administratively under the Railway Labor Act.

The decision of the Court of Appeals thus violates the well established doctrine which precludes judicial relief prior to the exhaustion of available administrative remedies. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 58 S. Ct. 459. It was error for the Court of Appeals to fail to direct the respondent to seek relief before the National Labor Relations Board.

### CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed.

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sions for the veterans it represents. As well might it be argued that because Congress has set minimum wages in many industries by the Fair Labor Standards Act, the Walsh-Healy Act and the Bacon-Davis Act, unions are prohibited from bargaining for more.

That the entire history of Congressional provision for employment security of veterans argues for a Congressional intent that the "gaps" should be filled by collective bargaining is fully developed in the main brief filed in Case No. 193 by Ford Motor Company.

Respondents also seem to impute to petitioner a claim for the plenary power of Congress to regulate labor relations in industries affecting commerce. Obviously no such claim is implied in our acceptance of the standards imposed by the Steele case for testing the validity of classifications made in collective bargaining. That the seniority provisions in question are reasonable and proper by those standards is fully developed in our main brief.

### III.

The collective bargaining agent represents a large number of persons having a great variety of interests and problems arising out of their employment, and it is therefore inevitable that benefits are negotiated which apply to some and not to others. Furthermore, in the negotiation of benefits, the union of necessity must exercise a judgment as to what it deems to be of social or economic desirability.

Respondent seeks to analogize between the collective bargaining process, on the one hand, and settlement negotiations to determine questions of priority between bondholders and holders of preferred shares of a corporation, on the other hand. He points out that the representative of the bondholders would be amiss in its duties if it agreed

to greater benefits for bondholders with military service than for those without military service. Respondent argues from this that a union may not take into consideration military service and other factors such as, for instance, how many children a man has, in the negotiation of contract benefits. Respondent's analogy is both inappropriate and misleading. The representative of the bondholders has but one duty, namely, that of recovering as much money as possible for the represented class. This same interest is also the sole common element of interest among the members of the class. Workers represented by a labor union, on the other hand, have a great variety of interests, many of which are not uniformly applicable to all members of the class. Of necessity, therefore, the negotiating labor union must in its collective bargaining deal with a great variety of subjects not all of which are of the same or of interest to all the represented members and employees. We have pointed out in our brief a number of these subjects. A typical illustration would be the seniority preference which is frequently given to physically handicapped employees who would have difficulty finding temporary work during layoffs. Such a contract benefit would clearly apply to only a small number. Another apt illustration would be a contract clause securing maternity leave benefits. Collective bargaining for more sanitary working conditions in some particular department would clearly be appropriate, while singling out a particular group of employees for benefit. Similarly, a concession from an employer to provide for parking space would clearly be within the scope of collective bargaining, while benefiting only those employees who drive to work. The negotiation of insurance or pension benefits varying with the number of dependents of an employee would also clearly seem to be legitimate and appropriate action by a labor organization, although the number of children in an employee's family is not in the narrow and

technical sense directly connected with the employee's employment relationship. Respondents deny the relevance of such matters because antecedent or unrelated to employment. Yet these matters may be and often are considered by labor unions in collective bargaining. By the same token, it is clearly appropriate for a labor organization to take into consideration the problems of returning servicemen who have re-employment rights protected by statute. The fact is, that the collective bargaining process, unlike respondents' bondholder analogy, is not merely a "dollar and cents" matter but is rather a dynamic process during which the differing economic, personal, and employment problems of all the workers represented must be and are taken into consideration.

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